

**Initial Statement of Reasons for
Proposed Amendments to California Code of Regulations, Title 18,**

SPECIFIC PURPOSE AND NECESSITY

Current Law

In 1993, section 6456 was added to the Revenue and Taxation Code (RTC) by Assembly Bill No. 1288 (Stats. 1993, ch. 181) to authorize the State Board of Equalization (Board) to prescribe regulations under which a spouse may be relieved of a liability under the Sales and Use Tax Law (RTC, § 6001 et seq.) if:

- The liability is due to an understatement of tax that is attributable to the other spouse;
- The spouse being relieved did not know of and had no reason to know of the understatement; and
- It is inequitable to hold the spouse being relieved liable for the tax attributable to the understatement, taking into account whether the spouse being relieved significantly benefited directly or indirectly from the liability, and taking into account all other facts and circumstances.

The Board subsequently adopted California Code of Regulations, title 18, section (Regulation) 1705.1, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, in 1997 to implement, interpret, and make specific RTC section 6456. As relevant here, Regulation 1705.1 currently requires a spouse to file a “written request for relief” to be considered for innocent spouse relief under section 6456, subdivision (a). Also, Regulation 1705.1 currently refers to a spouse that has filed such a request as a “claiming spouse” and refers to the spouse of an individual requesting innocent spouse relief as the “nonclaiming spouse.”

In 2000, subdivision (f) was added to RTC section 6456 by Assembly Bill No. 2898 (Stats. 2000, ch. 1052) to authorize the Board to prescribe regulations under which a spouse may be relieved of a liability for any tax or deficiency for which “innocent spouse relief” is not available under RTC section 6456, subdivision (a). Under RTC section 6456, subdivision (f), such relief may be granted if, after taking into account all the facts and circumstances,

the Board determines it is inequitable to hold the spouse liable for the tax or deficiency (or any portion thereof). The Board subsequently added subdivision (h) to Regulation 1705.1 in 2001 to implement RTC section 6456, subdivision (f)'s provisions for other "equitable relief." As relevant here, Regulation 1705.1, subdivision (h) currently requires a spouse to file a request for equitable relief within the applicable statute of limitations to be considered for equitable relief under RTC section 6456, subdivision (f). In addition, in 2006, the name of Regulation 1705.1 was updated to include "Registered Domestic Partners," and subdivision (j) was added to Regulation 1705.1 to explain that on and after January 1, 2005, registered domestic partners have the same rights to relief under RTC section 6456 and Regulation 1705.1 as spouses and all further references to "spouses" herein include registered domestic partners, unless otherwise noted.

In 2007, the Board adopted the Rules for Tax Appeals (Cal. Code Regs., tit. 18, § (Reg.) 5000 et seq.) to provide regulations governing the administrative and appellate review processes for all of the tax and fee programs administered by the Board. (Reg. 5000, *Statement of Intent; Title of Division.*) Regulations 5240, *Persons Who May File, Contents of, and Manner of Filing Requests for Innocent Spouse Relief*, 5241, *Acknowledgement and Review of Requests for Innocent Spouse Relief*, and 5242, *Requests for Reconsideration by the Board*, were included in the Rules for Tax Appeals to provide specific procedures for the Board's review of requests for innocent spouse relief and other equitable relief under RTC section 6456.

Regulation 5240 currently provides for the filing of a request for innocent spouse relief with the Board's Offer in Compromise Section. Subdivisions (a) through (c) of Regulation 5241 currently provide for the acknowledgement, review, and grant or denial of a request for innocent spouse relief by the Board's Offer in Compromise Section. If a request for innocent spouse relief is denied and it appears the individual who requested innocent spouse relief may be eligible for other equitable relief, then subdivisions (c) and (d) of Regulation 5241 also currently provide for the Offer in Compromise Section to:

- Send the individual a questionnaire and financial statement to complete and return to request other equitable relief; and
- Review the individual's completed questionnaire and financial statement to determine if other equitable relief is warranted.

Regulation 5242 currently provides that if a request for other equitable relief is denied, then the individual requesting relief may request that the denial be reconsidered by the Board at a Board hearing.

In 2007, the Legislature enacted Assembly Bill No. 1748 (Stats. 2007, ch. 342), which added 15 sections to the RTC to authorize the Board to prescribe regulations providing for innocent spouse relief and other equitable relief from liabilities imposed under the Motor Vehicle Fuel Tax Law (RTC, § 7657.5), Use Fuel Tax Law (RTC, § 8880), Private Railroad Car Tax Law (RTC, § 11408.5), Cigarette and Tobacco Products Tax Law (RTC, § 30285), Alcoholic Beverage Tax Law (RTC, § 32258), Timber Yield Tax Law (RTC, § 38454.5), Energy Resources Surcharge Law (RTC, § 40105), Emergency

Telephone Users Surcharge Law (RTC, § 41099), Hazardous Substances Tax Law (RTC, §§ 43159.1, 43159.2), Integrated Waste Management Fee Law (RTC, § 45158), Oil Spill Response, Prevention and Administration Fees Law (RTC, § 46159), Underground Storage Tank Maintenance Fee Law (RTC, § 50112.6), Fee Collection Procedures Law (RTC, § 55045.1), and Diesel Fuel Tax Law (RTC, § 60210.5), effective January 1, 2008. The Board adopted Regulation 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, in 2010 to implement, interpret, and make specific its authority to grant innocent spouse relief and other equitable relief to taxpayers and feepayers (hereafter collectively “taxpayers”) under these 14 additional tax and fee laws. Regulation 4903 generally incorporates the same provisions as Regulation 1705.1, including provisions regarding registered domestic partners. As relevant here, Regulation 4903 currently requires a spouse to file a “written request for relief” to be considered for innocent spouse relief, and it refers to a spouse that has filed such a request as a “claiming spouse” and refers to the spouse of an individual who is requesting innocent spouse relief as the “nonclaiming spouse.” Regulation 4903 also currently requires a spouse to file a request for equitable relief within the applicable statute of limitations to be considered for equitable relief.

In addition, the Board added Regulation 4903 to chapter 9.9, Special Taxes Administration-Miscellaneous, of division 2 of title 18 of the California Code of Regulations because it applies to liabilities incurred under all 14 of the special tax and fee laws listed above. Therefore, when the Board adopted Regulation 4903, the Board also adopted Regulations 1004, 1032, 1124.1, 1249, 1336, 1422.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, and 4106, which are also entitled *Innocent Spouse or Registered Domestic Partner Relief from Liability*. These cross-referencing regulations are located in other chapters in divisions 1 and 2 of title 18 that correspond with each of the special tax and fee laws listed above, and they currently direct taxpayers to the operative provisions in Regulation 4903.

In 2013, the Board adopted amendments to make Rules for Tax Appeals Regulations 5240, 5241, and 5242 applicable to the filing and review of all the requests for innocent spouse relief and other equitable relief governed by Regulation 4903, except requests filed under the Private Railroad Car Tax Law. This is because Regulations 5240, 5241, and 5242 are contained in chapter 2 of the Rules for Tax Appeals, which does not apply to Private Railroad Car Tax appeals. Also, as relevant here, Regulation 5240, subdivision (a), currently provides for the filing of requests for innocent spouse relief from taxes imposed under the “Diesel Fuel Tax Law” and Regulations 5240, 5241, and 5242 currently contain cross references to specific subdivisions in Regulations 1705.1 and 4903.

Specific Purposes, Necessity, and Benefits of the Proposed Amendments

In order to receive innocent spouse relief or other equitable relief from a specific tax or fee liability, a spouse must establish that it would be “inequitable” to hold that spouse liable for such amount under the applicable facts and circumstances. As a result, Board staff determined that it would be easier for taxpayers and more efficient for the Board if a taxpayer could file one request for relief in order to be considered for both innocent spouse

relief and other equitable relief at the same time. Board staff also determined that there was an administrative issue (or problem within the meaning of Gov. Code, § 11346.2, subdivision (b)(1)) because Regulations 1705.1, 4903, 5240, 5241, and 5242, collectively, provide for the initial filing and review of a taxpayer's request for innocent spouse relief, the subsequent filing and review of the taxpayer's request for other equitable relief only after the taxpayer's request for innocent spouse relief is denied, and the regulations only permit a taxpayer to request reconsideration from the Board if the taxpayer is denied other equitable relief. Therefore, Board staff prepared a Chief Counsel Memorandum dated May 6, 2015, which recommended that the Board address the administrative issue by:

- Amending Regulations 1705.1 and 4903 so that they no longer require a spouse to file a separate request for equitable relief;
- Amending Regulations 1705.1, 4903, and 5241 so that they require the Board to consider a spouse who files a request for innocent spouse relief for both innocent spouse relief and other equitable relief;
- Amending Regulation 5241 so that it requires the Offer in Compromise Section to send a spouse a "questionnaire and financial statement to complete and return" with the letter acknowledging his or her request for innocent spouse relief so that the Offer in Compromise Section can still obtain the information needed to determine whether other equitable relief is warranted;
- Amending Regulation 5241 so that it requires the Offer in Compromise Section to provide a spouse with instructions about how to request reconsideration in the event relief is initially denied; and
- Amending Regulation 5242 so that a spouse can request reconsideration from the Board if the Offer in Compromise Section denies both innocent spouse relief and other equitable relief as to any liability included in his or her request for innocent spouse relief.

In addition, spouses file "requests," not claims, for innocent spouse relief under Regulations 1705.1, 4903, and 5240, and Regulation 5241 currently uses the semantically correct phrase "non-requesting spouse" to refer to the spouse of an individual who is requesting innocent spouse relief. However, Regulations 1705.1 and 4903 generally refer to "requests" as "claims," a spouse requesting relief as a "claiming spouse," and the spouse of an individual who is requesting relief as a "nonclaiming spouse." Therefore, in the May 6, 2015, Chief Counsel Memorandum, Board staff recommended addressing these minor inconsistencies by replacing all of Regulations 1705.1's and 4903's references to "claims," "claiming spouse," and "nonclaiming spouse" with references to "requests," "requesting spouse," and "non-requesting spouse," respectively, so that Regulations 1705.1, 4903, and 5241 use consistent and accurate terminology.

Moreover, in the May 6, 2015, Chief Counsel Memorandum, Board staff recommended that the Board make minor grammatical and formatting changes to renumbered subdivisions (g) and (h) in Regulations 1705.1 and 4903. Board staff also recommended that the Board delete the cross-references to specific subdivisions in Regulations 1705.1 and 4903 from Regulations 5240 and 5242 because the specific subdivisions have been

renumbered and it is not necessary to specifically refer to the subdivisions to understand the meaning of Regulations 5240's and 5242's cross-references to Regulations 1705.1 and 4903. Board staff further recommended that the Board added an inadvertently omitted "s" to the end of Oil Spill Response, Prevention and Administration "Fee" in Regulation 5240, subdivision (a). Board staff additionally recommended revising the reference to Regulation 5241, subdivision (d), present in subdivision (c) of Regulation 5242 so that it refers to Regulation 5241, subdivision (c).

Board staff submitted the May 6, 2015, Chief Counsel Memorandum to the Board for consideration during its May 27, 2015, meeting and, during the meeting, the Board Members unanimously voted to propose the amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 recommended by staff, although Chairman Jerome Horton was absent and did not vote. The Board determined that the proposed amendments are reasonably necessary for the specific purposes of addressing the administrative issue referred to above, ensuring that Regulations 1705.1, 4903, and 5241 use consistent and accurate terminology, and clearly and efficiently administering the RTC provisions for innocent spouse relief and other equitable relief, cited above.

Prior to publishing this notice for the proposed amendments the Board authorized on May 27, 2015, Board staff realized that the Board inadvertently omitted references to RTC section 60601, which authorizes the Board to adopt regulations to implement, interpret, and make specific the provisions of the Diesel Fuel Tax Law, from the 2013 amendments to Regulations 5240's, 5241's, and 5242's authority notes. And, the Board also inadvertently omitted references to RTC section 60210.5, which authorizes the Board to prescribe regulations providing for innocent spouse relief and other equitable relief from liabilities imposed under the Diesel Fuel Tax Law, from the 2013 amendments to Regulations 5240's, 5241's, and 5242's reference notes. Therefore, the Board has also included references to RTC sections 60601 and 60210.5 in the proposed amendments to Regulations 5240's, 5241's, and 5242's authority and reference notes, respectively, which were not discussed in the May 6, 2015, Chief Counsel Memorandum, because the Board has determined that these additional amendments are reasonably necessary for the specific purpose of addressing the Board's prior omissions from the 2013 amendments.

The Board anticipates that the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 will benefit taxpayers by making it easier for taxpayers to be considered for other equitable relief, and the proposed amendments will benefit taxpayers, Board staff, and the Board by making the Board's review of requests for innocent spouse relief and other equitable relief more efficient. The proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 were not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Regulations 1705.1, 4903, 5240, 5241, and 5242 or the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242.

DOCUMENTS RELIED UPON

The Board relied upon the May 6, 2015, Chief Counsel Memorandum, the exhibits to the memorandum, and the comments made during the Board's discussion of the memorandum during its May 27, 2015, meeting in deciding to propose the amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 described above.

ALTERNATIVES CONSIDERED

The Board considered whether to begin the formal rulemaking process to adopt the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 at this time or, alternatively, whether to take no action at this time. The Board decided to begin the formal rulemaking process to adopt the proposed amendments at this time because the Board determined that the amendments are reasonably necessary for the reasons set forth above.

The Board did not reject any reasonable alternative to the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 that would lessen any adverse impact the proposed action may have on small business or that would be less burdensome and equally effective in achieving the purposes of the proposed action. No reasonable alternative has been identified and brought to the Board's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in carrying out the purposes for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

INFORMATION REQUIRED BY GOVERNMENT CODE SECTION 11346.2, SUBDIVISION (b)(5) AND ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

As previously explained, the Board adopted Regulations 1705.1, 4903, 5240, 5241, and 5242 to implement, interpret, and make specific the RTC provisions for innocent spouse relief and other equitable relief, cited above. Currently, the regulations collectively provide for the initial filing and review of a taxpayer's request for innocent spouse relief, and the subsequent filing and review of the taxpayer's request for other equitable relief only after the taxpayer's request for innocent spouse relief is denied, and the regulations only permit a taxpayer to request reconsideration from the Board if the taxpayer is denied other equitable relief. The proposed amendments make the Board's administration of the RTC provisions for innocent spouse relief and other equitable relief more efficient by providing for the filing of one request for innocent spouse relief, the review of that request by the Board's Offer in Compromise Section to determine if either innocent spouse relief or other equitable relief is warranted at the same time, and the ability to request reconsideration from the Board if an individual requesting relief is not granted either innocent spouse relief or other equitable relief from all the liabilities in his or her request. As a result, the proposed amendments change the Board's procedures by eliminating the requirement that some taxpayers file a separate request for other equitable relief, in addition to their requests for innocent spouse relief, within the applicable statute

of limitations. The proposed amendments also change the Board's procedures so that Board staff and the Board can consider whether a taxpayer qualifies for innocent spouse relief and other equitable relief at the same time.

However, the proposed amendments do not change the substantive requirements for granting or denying innocent spouse relief and other equitable relief. And, after the proposed amendments, a taxpayer will still need to provide the same information to the Offer in Compromise Section that is currently needed to determine whether the taxpayer qualifies for innocent spouse relief and other equitable relief.

As a result, the Board's Legal Department has determined that the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 will make it easier for taxpayers to be considered for other equitable relief and make it more efficient for the Offer in Compromise Section and the Board to determine whether taxpayers are entitled to such relief. However, the proposed amendments will not substantially increase or decrease the number of requests for innocent spouse relief currently filed with the Offer in Compromise Section. The proposed amendments will not substantially increase or decrease the amount of innocent spouse relief and other equitable relief currently granted by the Board. And, as a result, the proposed amendments will not have a measurable impact on revenue.

Therefore, the Board anticipates that the proposed amendments will benefit taxpayers by making it easier for taxpayers to be considered for other equitable relief, and the proposed amendments will benefit taxpayers, Board staff, and the Board by making the Board's review of requests for innocent spouse relief and other equitable relief more efficient. However, the Board estimates that the proposed amendments will not have a measurable economic impact on individuals and business. And, the Board has determined that the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, because the Board has estimated that the proposed amendments will not have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars (\$50,000,000) during any 12-month period.

Further, based on these facts and all of the information in the rulemaking file, the Board has also determined that the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

Furthermore, Regulations 1705.1, 4903, 5240, 5241, and 5242 do not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Board has also determined that the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 will not affect the benefits of Regulations 1705.1, 4903, 5240, 5241, and 5242 to the health and welfare of California residents, worker safety, or the state's environment.

The forgoing information also provides the factual basis for the Board's initial determination that the adoption of the proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 will not have a significant adverse economic impact on business.

The proposed amendments to Regulations 1705.1, 4903, 5240, 5241, and 5242 may affect small businesses.